

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DAVID E. MCCLAIN,

Plaintiff,

Civil Action No. 07 CV 5947
(CLB)

-against-

NOTICE OF MOTION

THE UNION CENTRAL LIFE INSURANCE
COMPANY,

Defendant.

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SIRS:

PLEASE TAKE NOTICE, that upon the annexed affirmation of Norman L. Tolle, dated August 28, 2007, the annexed affidavit of Carol Schweitzer dated August 28, 2007 and the accompanying Memorandum of Law, THE UNION CENTRAL LIFE INSURANCE COMPANY, by its attorneys Rivkin Radler LLP, will move this Court before the Honorable Judge Charles L. Brieant on September 21, 2007 at 9:00 a.m. at the United States District Courthouse located at 300 Quarropas Street, White Plains, New York 10601, for an Order, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, dismissing the plaintiff's complaint for lack of subject matter jurisdiction, and for such other and further relief that this Court deems just and proper.

PLEASE TAKE FURTHER NOTICE, that pursuant to Local Civil Rule 6.1(b), plaintiff's opposition must be served on or before September 11, 2007, and defendant's reply must be served on or before September 18, 2007.

Dated: Uniondale, NY
August 28, 2007

Respectfully submitted,

RIVKIN RADLER LLP
Attorneys for Defendant
THE UNION CENTRAL LIFE
INSURANCE COMPANY

By:



NORMAN L. TOLLE, ESQ. (NT - 5081)
926 RexCorp Plaza
Uniondale, New York 11556-0926
(516) 357-3000

TO: Evan M. Foulke, Esq.
FOULKE LAW OFFICES
Attorneys for Plaintiff
1997 Route 17M
Goshen, New York 10924

AFFIDAVIT OF SERVICE

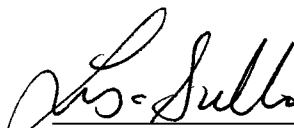
STATE OF NEW YORK)
) SS. :
COUNTY OF NASSAU)

I, Lisa Sullo being sworn, say:

I am not a party to the action, am over 18 years of age and reside in West Babylon, New York.

On August 28, 2007, I served the within **Notice of Motion**, by depositing a true copy thereof, enclosed in a wrapper addressed as shown below, into the custody of Federal Express for overnight delivery, prior to the latest time designated by that service for overnight delivery.

Evan M. Foulke, Esq.
FOULKE LAW OFFICES
Attorneys for Plaintiff
1997 Route 17M
Goshen, New York 10924



Lisa Sullo

Sworn to before me this
28th day of August, 2007



Notary Public

SUSAN M. DAVIES
Notary Public, State of New York
No. 01DA6129334
Qualified in Suffolk County
Commission Expires June 20, 2009